



## HEALTH CARE ALERT

### OIG REVISES PRACTICES TO IMPROVE TRANSPARENCY OF ENFORCEMENT ACTIONS AGAINST HEALTH CARE PROVIDERS

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In response to a May 2018 request from U.S. Senators Claire McCaskill (D-MO) and Ron Wyden (D-OR), the U.S. Department of Health & Human Service (HHS), Office of Inspector General (OIG), recently announced it is increasing transparency of enforcement actions against health care providers by revising its practices in three significant ways.

First, on September 27, 2018, the OIG began posting on its website a list of closed corporate integrity agreements (CIA) going back ten (10) years.<sup>1</sup> A CIA is an agreement between the OIG and a health care provider negotiated as part of a settlement of a federal health care investigation or enforcement action. CIAs are typically in effect for five (5) years and require health care providers to agree to obligations intended to ensure compliance with health care laws. In exchange for entering into a CIA, the provider usually avoids exclusion from participation in Medicare, Medicaid, or other federal health care programs. As a result of this change, federal and state regulators and the taxpaying public will have improved access to compliance histories of repeat and prior offenders.

Second, the OIG has added information to its website regarding its assessments of the future risk presented by defendants in False Claims Act (FCA) cases. The mechanics of the assessments will remain the same as before (*i.e.*, based on a 2016 guidance document from the OIG),<sup>2</sup> except that the assessments will now be available in the public domain. These assessments evaluate offending health care providers on a risk continuum from highest to lower risk by focusing on: (i) the nature and circumstances of the offender's conduct, including financial loss to any federal health care program and impact on program beneficiaries; (ii) the offender's level of cooperation during the investigation; (iii) ameliorative efforts of the offender, including disciplinary action against responsible individuals, additional training, and increased investment in compliance activities; and (iv) the offender's compliance history, including self-disclosure activity and existence of a robust compliance program.

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<sup>1</sup> U.S. Dept. of Health & Human Services, Office of Inspector General, [Closed Corporate Integrity Agreements](https://oig.hhs.gov/compliance/corporate-integrity-agreements/closed-cias.asp) (available at <https://oig.hhs.gov/compliance/corporate-integrity-agreements/closed-cias.asp>).

<sup>2</sup> U.S. Dept. of Health & Human Services, Office of Inspector General, [Policy Statement](https://oig.hhs.gov/exclusions/files/1128b7exclusion-criteria.pdf) dated April 18, 2016 (available at <https://oig.hhs.gov/exclusions/files/1128b7exclusion-criteria.pdf>).

Third, beginning in FY 2019, the OIG will publish the identities of health care providers who refuse to enter into CIAs with the OIG. The OIG believes these defendants pose a heightened risk to federal health care programs and their beneficiaries.

The OIG's recent announcement regarding its efforts to increase transparency in federal enforcement actions against health care providers highlights the need for such providers to review their compliance programs (or, alternatively, implement a formal compliance program) and confirm internal practices are compliant with state and federal law.

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